

ST 03-0096-GIL 07/10/2003 PRODUCTS OF PHOTOPROCESSING

This letter discusses how photographers should apply sales tax on their invoices. It also discusses claims for credit. See 35 ILCS 120/2-15. (This is a GIL.)

July 10, 2003

Dear Xxxxx:

This letter is in response to your letter dated March 4, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am a professional photographer in Illinois. This letter is in regards to the Retailers Occupation Tax -- Title 86; Part 130.

My tax accountant did not advise me of this regulation at the time I started in June 2002. I've been paying 8.25% of total sales to the Illinois Dept. of Revenue in sales tax each month.

Recently, I learned about the Retailers Occupation Tax. My business is set up where I provide service in conjunction with photoprocessing. I do not state the charge for photoprocessing separately on the bill. Therefore, I plan to collect sales tax on 10% of the total sales.

My business is located in CITY and approximately 80% of my business is conducted here. However, I do have customers in adjacent suburbs. Do I need to charge different sales tax depending on where I am?

I discussed my situation with a lady in the Sales Tax Department and she suggested I fax this letter to you so I could be advised on the proper way to collect sales tax. She also mentioned filing a ST - 1X, in regards to the overpaid sales tax. Since I collected the tax from customers and it would be impossible to refund them, do I still need to complete the ST -- 1 X?

I can be contacted by my work phone. Thank you.

Section 2-15 of the Retailers' Occupation Tax Act regarding photoprocessing provides that "[f]or purposes of the tax imposed on photographs, negatives, and positives by this Act,

'photoprocessing' includes, but is not limited to, developing films, positives, negatives, and transparencies, and tinting, coloring, making, and enlarging prints. Photoprocessing does not include color separation, typesetting, and platemaking by photographic means in the graphic arts industry and does not include any procedure, process, or activity connected with the creation of the images on the film from which the negatives, positives, or photographs are derived. The charge for in-house photo processing may not be less than the photoprocessor's cost price of materials. In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price unless the sale is made by a professional photographer, in which case tax is imposed on 10% of the entire selling price." 35 ILCS 120/2-15. As you can see from the statutory language referenced above, a professional photographer that does not state a separate charge for the photoprocessing component of his services incurs tax on 10% of the entire selling price for that transaction.

For your general information, please see 86 Ill. Adm. Code 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. Although Section 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Therefore, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. The tax rate is fixed by the location of the seller, not the delivery location. For example, if a customer comes to you at your location and you enter into an agreement with them at that location to provide professional photography services, the sale would be deemed to have occurred at your location and any local tax imposed in the jurisdiction where you are located will be incurred. However, if you travel to another location and enter into an agreement to provide professional photography services while at that other location, the sale would be deemed to have occurred in that other location and any local tax, if any, imposed in that other jurisdiction will be incurred. If you make sales in other jurisdictions, you should contact the Department's Central Registration Division to obtain the proper forms for reporting sales in those other jurisdictions.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See the enclosed copy of 86 Ill. Adm. Code 130.1501. Only persons who have actually paid tax to the Department can file a claim for credit. No credit shall be given the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the purchaser from whom it was collected. In other words, if a purchaser has paid tax to his supplier, only that supplier can file a claim for credit. The supplier must first refund tax money paid by the purchaser before proceeding with the claim. Once the supplier has done this, he or she must apply for the credit in the manner described in the regulation.

Suppliers are not required by law to apply for such credits; rather, this procedure is voluntary. Whether or not the supplier refunds the tax paid and files a claim for credit with the Department is a private matter between the supplier and the purchaser. As to any claim for credit filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.